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OFFICE OF PETITIONS

In re Application of :
Seiler, et al. : DECISION ON PETITIONS
Application No. 09/919,594 : UNDER 37 CFR 1.47 and
Filed: July 31, 2001 : 37 CFR 1.183
Atty. Dkt. 5246 P 003 :
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This decision is in response to the petition under 37 CFR 1.47(b) filed June 27, 2005. This matter is also being treated under 37 CFR 1.183 to waive the requirements of 37 CFR 1.131.

Petitioners seek to submit a declaration under 37 CFR 1.131, but state that all of the inventors are not available to execute the declaration.

DECISION UNDER 37 CFR 1.47

The provisions of 37 CFR 1.47 (and a petition thereunder) are only applicable to the initial filing, and PTO acceptance, of an application wherein one or more of the named inventors refuses to sign, or cannot be located so as to sign, the oath or declaration filed under 37 CFR 1.63. The instant case contains a properly executed declaration under 37 CFR 1.63. See MPEP 201.03(b); 409.03.

Accordingly, the petition under 37 CFR 1.47 is hereby DISMISSED AS MOOT.

Petitioner may request a refund of the previously submitted \$200.00 petition fee. Petitioner may request a refund by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

DECISION UNDER 37 CFR 1.183

The provisions of 37 CFR 1.183 provide that "[i]n an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or

the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed."

pursuant to the provisions of 37 CFR 1.183, petitioners seek to waive the requirements of 37 CFR 1.131 and submit a declaration under 37 CFR 1.131 without the signature of all the named inventors.

The provisions of 37 CFR 1.131 provide that "[w]hen any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based."

The instant application is not subject to reexamination nor has the application previously been accorded status under 37 CFR 1.47. Accordingly, the inventors of the application must execute the Rule 1.131 declaration.

In order for a petition under 37 CFR 1.183 to be granted to waive this requirement that the non-signing inventors sign the Rule 1.131 declaration, petitioners must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

Petitioners have established that bona fide effort has been made to locate the non-signing inventors who are either unavailable, cannot be located, or deceased. Under the circumstances, it is concluded that petitioner has demonstrated that this is an extraordinary situation requiring waiver of the rules.

The 37 CFR 1.131 declaration may be entered, despite the fact that its requirement that all of the inventors sign the declaration has not been satisfied.

The application file is being forwarded to Technology Center 2100 for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0310.



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Office of Petitions